UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ECOSYSTEMS, TRIBAL AND
PUBLIC AFFAIRS

July 16, 2010

Michelle Eraut
Environmental Program Manager
Federal Highway Administration
530 Center Street NE, Suite 100
Salem, Oregon 97301

Tim Potter
Area 3 Manager, Region 2
Oregon Department of Transportation
Mid-Willamette Valley Area
885 Airport Road SE, Bldg. P
Salem, OR 97301-4788

Re: Newberg-Dundee Bypass Tier 2 Draft Environmental Impact Statement (DEIS)
EPA Project Number 10-032-FHW

Dear Ms. Eraut and Mr. Potter:

The Environmental Protection Agency has reviewed the Newberg-Dundee Transportation Improvement Project, Bypass Element, Tier 2 DEIS. We are submitting comments on the Draft EIS pursuant to our responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act. Thank you for accepting our comments.

The DEIS is Oregon Department of Transportation's (ODOT) proposal for an 11 mile, four-travel lane, access controlled expressway (Bypass) with four interchanges and local circulation changes to reduce congestion on Oregon 99 through the cities of Newberg and Dundee in Yamhill County, Oregon.

This project has benefitted from the participation of the interagency Collaborative Environmental and Transportation Agreement on Streamlining (CETAS) group, which includes representatives of resource agencies, including EPA. The benefits of the CETAS process are evident in the quality of the DEIS, and we wish to commend FHWA and ODOT for the good work that has been done. We support the tiered analysis and ongoing agency coordination and public outreach. We do have outstanding issues and recommendations related to mitigation commitments, water quality protection and watershed improvements. We anticipate that the permitting process for this project will address these issues. However, we believe that mitigation and watershed improvements should be planned as early as possible (i.e., prior to permitting and construction) and we recommend the following comments be addressed in the final EIS. We are rating the DEIS as LO, Lack of Objections (see attachment 1 for explanation of rating system).

In 2004 ODOT developed an agreement (attachment 2) with the natural resource agencies (i.e. CETAS) concerning ODOT's preferred alternative (selected in the Tier 1 Draft/Final EIS) for a southern corridor alignment versus a northern alignment, which the agencies preferred based on potential habitat and resource issues as a southern alignment put the

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project closer to the Willamette River and could affect a number of stream crossings. This agreement indicated that the agencies would support the southern alignment provided ODOT did due diligence in their consideration of natural resource issues (i.e., avoiding wetlands or stream areas by considering bridge options, using enhanced stormwater controls, developing mitigation that is commensurate with the type of impact, etc.). While we think that ODOT has tried to meet the conditions of the agreement, we still feel that the EIS does not provide enough details regarding mitigation. For example, regarding wetland impacts (direct and indirect), the EIS does not identify any specific mitigation strategies for compensating for resources except for a vague list of actions that might occur such as " look for opportunities in the Chehalem Creek and Springbrook Creek Watersheds for mitigation opportunities" (see pg. 3-332) or to perhaps "mitigate for wetland losses to wetland prairie by restoring or enhancing wetland prairie in close proximity if feasible." We believe the EIS should be more specific and discuss the details of mitigation opportunities and commitments.

The 2004 CETAS agreement promoted the concept of protection and enhancement of resources within the project area as the primary means for compensatory mitigation. In the 6 year interval since completion of the Tier 1 analysis and development of this Tier 2 DEIS, mitigation opportunities may have diminished as localized development and surrounding land use changes have impacted remaining aquatic resources. We feel strongly that in order to provide the mitigation that would be commensurate with the type of impact that will occur from the project, specific mitigation opportunities should be identified as soon as possible.

The CETAS agreement also encouraged ODOT to consider other proactive approaches to mitigation such as removing existing fish and wildlife barriers on the existing Highway Oregon 99W. This included encouraging stormwater treatment of runoff from roadways currently without treatment. While the Tier 2 DEIS assessed the fish barriers currently existing on Oregon 99W, it did not identify opportunities to provide for fish passage as part of this project. This same approach was used in dealing with water quality issues along the existing Oregon 99W by deferring any improvements until future transportation projects are developed. We recommend that the final EIS discuss how these opportunities would be incorporated into the project.

The Tier 2 DEIS analysis demonstrates that the scale and scope of natural resources issues are not as significant as first understood by the natural resource agencies; however there are existing issues related to water quality and habitat within the proposed project area. The assessment of cumulative impacts recognizes that these conditions are not likely to improve, although measures have been incorporated into the project design to minimize additional impacts. Opportunities to either rehabilitate or ameliorate the current 99W roadway would assist greatly in improving current watershed conditions. Some particularly vulnerable areas such as the Spring Brook watershed are likely to continue to degrade with the addition of more impervious surface from this project and others to its drainage area. Every opportunity to further improve conditions in this watershed should be considered and discussed in the final EIS.

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Thank you for the opportunity to review this draft EIS and we very much appreciate Rod Thompson of your staff for taking the time to discuss the project components and issues in detail at the Newberg public meeting. If you have any questions regarding the above comments please contact Lynne McWhorter of my staff at (206) 553-0205 or via email at mcwhorter.lynne@epa.gov or contact Yvonne Vallette, EPA's representative for CETAS, via email at vallette.yvonne@epa.gov.

Sincerely,

Christine B. Reichgott

Christine B. Reichgott, Unit Manager
Environmental Review and Sediment Management Unit

Cc: Rod Thompson, Oregon Department of Transportation
Yvonne Valette, EPA Region 10 Oregon Operations Office

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U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements Definitions and Follow-Up Action*

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

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Collaborative Environmental and Transportation Agreement for Streamlining (CETAS)

RECORD OF AGREEMENT/CONSENSUS

For

Newberg-Dundee Transportation Improvement Project

This document is intended to serve as a record of and to provide details of an agreement reached between Oregon Department of Transportation (ODOT) and four non-concurring CETAS stakeholders during a meeting on November 6, 2003. The agreement allows for interagency concurrence on the Preferred Alternative (PA) for the Newberg-Dundee Transportation Improvement Project (Project) Location Draft Environmental Impact Statement (LDEIS). The agreement is contained in the numbered items listed in the section "Specific Elements of the Agreement."

Parties to the agreement will sign this document as a means of formalizing concurrence on the PA and to acknowledge that implementation of all aspects of the agreement will be necessary to maintain concurrence. As a record of the agreement, this document will also provide for a set of common expectations regarding future performance of the Project.

I. Background

In July 2003, five CETAS stakeholder agencies formally declined to concur with the PA identified by ODOT and the Federal Highway Administration in the LDIES for the Project. The agencies (collectively referred to as Agencies in this agreement) are the NOAA-Fisheries, U.S. Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), Oregon Department of Environmental Quality (DEQ), and Oregon Department of Fish and Wildlife (ODFW). Reasons for non-concurrence were detailed in formal letters provided by each of the agencies, and are summarized in "ODOT Response to Issues Raised in Non-concurrence Letters - CETAS Elevation Meeting - November 6, 2003", which is attached.

The general basis for non-concurrence was that the criteria developed to assess impacts did not fully or accurately measure performance with respect to environmental resources. The Agencies believed that the northern route alternative described in the LDEIS would be less disruptive to subject resources than the PA while still satisfying the purpose and need of the project.

ODOT indicated that various mitigation measures would be included in the final project

to address these concerns. The Agencies rejected this approach for two reasons: a) ODOT was unable to develop and implement a specific conservation plan prior to the design stage; and b) Clean Water Act section 404(b) guidelines require that avoidance and minimization, rather than mitigation, serve as the primary basis for determining the least environmentally damaging practicable alternative.

ODOT sought elevation regarding issues raised by the non-concurring Agencies because it disagreed with the Agencies basis for non-concurrence. ODOT's positions regarding these issues are as follows: 1) state of the art ODOT traffic modeling indicates that induced growth will be minimal; 2) nonconcurring Agencies participated in the development of the criteria and the protocols indicated that the northern route had greater habitat impacts than the southern route; and 3) proximity to the Willamette River was not agreed upon by CETAS as a criteria for evaluating water quality impacts.

On November 6, 2003, Level-2 of CETAS was convened for formal elevation. During this elevation meeting, ODOT and four of the non-concurring Agencies (NOAA Fisheries, ODFW, EPA, and FWS) agreed on an approach that would allow for concurrence with the PA. The approach called for the identification and implementation of measures to address avoiding and mitigating for potential impacts from the PA. It also called for balance between the Agencies' need for up-front specificity and commitment regarding such measures and the ODOT's inability to provide such specificity during the location phase of the Project. This balance would be achieved through a document in which ODOT commits to incorporation of these measures during the design phase of the Project. In the document, such measures would be described in a fairly broad and conceptual fashion, with specificity only as necessary to establish the expectations for measuring future consistency with the agreement. The elements of this approach and agreement are described in more detail below.

II. Specific Elements of Agreement

1. The ODOT and the Agencies recognize that there is disagreement on various aspects of methodology and interpretation of concurrence on evaluation criteria associated with selection of the PA.

2. ODOT will work with the agencies to identify and incorporate project measures and expectations necessary to avoid, minimize, and mitigate the direct and indirect effects associated with the PA as identified by the Agencies. These measures are identified in this agreement. Measurable expectations will be identified for each goal identified in this agreement and incorporated into the Project during the development of the design-level EIS. The costs of implementing these measures and expectations will be included in Project costs in the design-level DEIS and will be reflected in the funding

appropriated at the time of Project entry into the State Transportation Improvement Plan (STIP).

3. The Agencies concurrence for the PA in the location EIS is conditioned based on the premise that ODOT will implement the measures outlined in this Agreement. These measures are designed to provide selection for the agencies of the least environmentally damaging practical alternative for the Project. The Agencies reserve the right to rescind their concurrence with the PA during the development of the Project design level DEIS if the Agencies determine that these measures are not met. .

4. If the Agencies believe that subsequent planning and design for the Project are not consistent with the intent of the agreement, they may rescind the conditional concurrence provided through the agreement and request elevation. Elevation procedures are identified in the CETAS Charter Agreement. ODOT may seek elevation if it believes that one or more agencies are not upholding the agreement.

5. Withdrawal of concurrence as described above will be reviewed as consistent with the goals and intent of this Agreement.

III. Agreement Measures

The following measures will be used by ODOT and the agencies to develop the appropriate avoidance, minimization and mitigation opportunities, and by the Agencies to assess adequacy and consistency with the agreement and compliance with applicable State and Federal environmental regulations including: the Endangered Species Act, the 404(b)(1) Guidelines under the Clean Water Act, the National Historic Preservation Act, Oregon's Transportation Planning Rule, Section 4(f) of the Department of Transportation Act of 1968, FHWA Technical Advisory T6640: Guidance For Preparing And Processing Environmental And Section 4(F) Documents, ODFW Mitigation Policies, and the Fish and Wildlife Coordination Act. For the purposes of this agreement, mitigation is defined as "Compensating for the impact by replacing or providing substitute resources or environments".

A. Direct and indirect impacts to streams, riparian zones, floodplains, wildlife, wildlife habitat and wetland by the bypass and the associated interchanges and frontage roads, as described in the Design EIS, will be mitigated by protecting and enhancing major tributaries to the Willamette River and the Willamette River floodplain in the project area with the goal of long-term protection through such means as conservation easements and land donations to conservation groups or agencies with a resource protection mission.

1. ODOT will work with the agencies to identify, evaluate, and implement measures to minimize development in the floodplain to the extent possible. ODOT will seek opportunities to meet this measure through land purchase, leveraging enhancement opportunities with other conservation partners, and working with local jurisdictions to change zoning to protect floodplain functions.

2. ODOT will work with the agencies to identify, evaluate and implement measures to protect and enhance stream habitat values in the Willamette River and its tributaries within the project area.

Protection and enhancement of resources will focus on:

a. Hess, Chehalem, and Spring Brooks Creeks and their respective riparian areas, floodplains and wildlife values. Special attention should be directed at the stream related features that significantly influence stream processes and functions; and

b. Ash Island, at Willamette River Mile 51 to 52.

B. ODOT will incorporate other measures to avoid, minimize, and mitigate project impacts to streams, riparian zones, floodplains, wildlife, wildlife habitat and wetlands, including:

1. Minimizing the number of interchanges to be consistent with the Purpose and Need Statement of the Project. Interchanges and other project features will be strategically located to avoid sensitive or irreplaceable habitats to the extent possible.

2. Requiring that bridge crossings over streams fully span the width of their respective floodplains. ODOT will incorporate the Final Fluvial Performance Standards for bridge replacements as guidelines (for both bridge replacements and new bridges), ODFW/NOAA fish passage criteria for all culverts, and maintain wildlife passage in existing wildlife corridors.

C. ODOT will work with the agencies to identify and implement ways to maintain or improve water quality in the adjacent stretch of the Willamette River and its tributaries and to meet applicable water quality and quantity specifications.

1. ODOT will enhance water quality to the Willamette River through measures such as land purchase, leveraging enhancement opportunities with other conservation partners, and stormwater treatment for the bypass, new interchanges, and state roads currently without treatment.

2. All construction and post-construction stormwater treatments will be designed to meet pre-project water quality, quantity and seasonality, with a preference for upland stormwater treatment sites.

D. ODOT will work with the agencies to develop a viable stabilization strategy for the bank adjacent to Chehalem Creek that considers biological means of stabilization as its first priority and utilizes stream geomorphology analysis in the project design to minimize channelization of the stream, impacts to stream forming processes, and any other adverse alterations of stream geomorphology resulting from the project.

E. Mitigation for Project-related impacts will be commensurate with the area and severity of the impact. Mitigation for habitat impacts will be measured by the ecological value lost as a result of the Project impact.

1. Mitigation actions should be implemented in advance of or within the same year of the Project related construction activities. Mitigation actions may include but are not necessarily limited to:

a. Establishment of a mitigation bank within the Project area in an ecologically significant area such as Ash Island; and

b. Removal of existing fish and wildlife crossing blockages on Highway 99W by retrofitting them to allow successful fish and wildlife crossings.

IV. Signatures

The following parties have determined that this document is an accurate representation of agreements reached through CETAS on November 6, 2003, and that these agreements should underlie future implementation of the Newberg-Dundee Transportation Improvement Project: Signature is required from those names highlighted.

Tech Team Member	Agency	2nd Tier Signer
Elton Chang	FHWA	
Bob Cortright	ODLCD	
James Hamrick	SHPO	
John Marshall	USFWS	Joe Zisa
Dave McAllister	ODOT	Cathy Nelson
Mike McCabe	ODSL	
Tom Melville	ODEQ	Mark Charles
Randy Reeve	ODFW	Patty Snow
Susan Sturges	Corps	
Jim Turner	NOAA	Mike Tehan
Yvonne Vallette	EPA	Michelle Pirzadeah